IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3453 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORMOHAMMED AHMEDMIYAN SAIYED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3453 of 2001

MR ANIL VERMA FOR MR MM TIRMIZI for Petitioner

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/10/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Mehsana, vide order dated March 19, 2001, Annexure A to the petition,

detained the petitioner - detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner's activities as detrimental to the maintenance of public order as a case is registered against him alongwith three other persons on October 27, 2000 with Kadi Police Station vide CR No. 386 of 2000 for the commission of offence under the Prevention of Cruelty to Animals Act, 1960, and, therefore, it was indispensable on the part of the detaining authority to detain him. Therefore, the petitioner is detained by the detaining authority by passing the impugned order of detention.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue an appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. Though the petitioner has challenged the impugned order of detention on various grounds, Mr. Anil Verma, learned advocate for the petitioner, has restricted his arguments to the point that the order of detention suffers from non-application of mind. To buttress the aforesaid submission, he drew the attention of this Court to the grounds of detention wherein it is stated by the detaining authority that the petitioner was caught red-handed on the spot while on having perusal of the FIR, it is clear that names of two persons who were caught hold at the spot of occurrence are mentioned in the FIR whereas names of the two persons who ran away are not mentioned in the FIR and as per the FIR, the petitioner was not a person who was caught red-handed at the spot and his name is not mentioned in the FIR and in spite of that fact, the detaining authority stated that petitioner was caught on the spot and his name is mentioned in the FIR and, therefore, on the ground of non-application of mind, the impugned order of detention requires to be quashed and set aside.

5. Mr. S.S. Patel, learned AGP who appears on behalf of the respondents, contested the petition by making oral submissions. He however, does not dispute the factual aspect with regard to the observation made in the grounds of detention that petitioner was caught hold on the spot. He also conceded that in the FIR name of two persons are mentioned who were caught at the spot whereas names of the two persons who ran away from the

scene of occurrence are not mentioned. He also conceded that the petitioner is not one of the persons caught red-handed on the spot. He, therefore, urged to pass appropriate orders.

6. I have heard the learned counsel appearing for the parties. I have perused the averments made in the petition, the documents annexed to the petition and the impugned order of detention.

7. On having perusal of the impugned order of detention as well as the relevant papers supplied to the detenu, from the FIR it is seen that the FIR came to be registered on October 27, 2000 with Kadi Police Station against four persons. Out of four persons, two persons named in the FIR are caught at the spot and two persons whose names have not been mentioned in the FIR as they ran away. The petitioner is not one of the persons whose name is mentioned in the FIR whereas on having perusal of the impugned order of detention, the detaining authority has observed that the petitioner is one of those two persons who was caught red-handed at the spot of occurrence. In my view, therefore, the order passed by the detaining authority is a clear case of non-application of mind and on this ground alone the impugned order of detention is required to be quashed and set aside and the petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)